

Kelly M. Dermody (Cal. Bar No. 171716)
 Daniel M. Hutchinson (Cal. Bar No. 239458)
 Anne B. Shaver (Cal. Bar No. 255928)
 Marc A. Pilotin (Cal. Bar No. 266369)
 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
 275 Battery Street, 29th Floor
 San Francisco, CA 94111-3339
 Telephone: (415) 956-1000
 Facsimile: (415) 956-1008
 E-Mail: kdermody@lchb.com
 E-Mail: dhutchinson@lchb.com
 E-Mail: ashaver@lchb.com
 E-Mail: mpilotin@lchb.com

Jahan C. Sagafi (Cal. Bar No. 224887)
 OUTTEN & GOLDEN LLP
 One Embarcadero Center, 38th Floor
 San Francisco, CA 94111
 Telephone: (415) 638-8800
 Facsimile: (415) 638-8810
 E-Mail: jsagafi@outtengolden.com

Adam T. Klein (admitted *pro hac vice*)
 Juno Turner (admitted *pro hac vice*)
 OUTTEN & GOLDEN LLP
 3 Park Avenue, 29th Floor
 New York, New York 10016
 Telephone: (212) 245-1000
 Facsimile: (212) 977-4005
 E-Mail: atk@outtengolden.com
 E-Mail: jturner@outtengolden.com

Attorneys for Plaintiffs and Proposed Class Members

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

ERIC BENEDICT, RICHARD BOWDERS,
 KILRICANOS VIEIRA, and DAVID
 MUSTAIN on behalf of themselves and
 classes of those similarly situated,

Plaintiffs,

v.

HEWLETT-PACKARD COMPANY,
 Defendant.

Case No. C 13-0119 BLF

**PLAINTIFFS' EMERGENCY MOTION
 TO ENLARGE TIME AND TO
 COMPEL PRODUCTION OF
 DOCUMENTS**

Date:
 Time:
 Judge: Hon. Beth Labson Freeman
 Crtrm: 3, 5th Floor

1 **I. Introduction**

2 On June 23, 2015, Defendant (“HP”) filed an opposition to Plaintiffs’ motion for class
3 certification along with nineteen class member witness declarations and seven manager witness
4 declarations. On June 25, 2015, Plaintiffs notified HP of six class member witnesses they wished
5 to depose, and requested that HP provide deposition dates and produce documents consistent with
6 the search HP used when it selected documents to cross-examine Plaintiffs’ class member
7 witnesses in connection with Plaintiffs’ opening motion. Plaintiffs’ reply in support of their class
8 certification motion is currently due July 10, 2015. Plaintiffs have engaged in a meet and confer
9 with HP in an effort to schedule the depositions of HP’s witnesses, and review their relevant
10 documents, prior to this deadline. As HP has been unable to provide dates of availability for all
11 of the depositions of their witnesses, and has refused to produce the documents relevant thereto,
12 Plaintiffs requested that HP stipulate to a brief continuance of the reply brief schedule in order to
13 facilitate completion of this work. HP refused. Plaintiffs hereby submit this emergency motion
14 to extend the deadline for their reply brief and to compel production of documents.

15 **II. Background**

16 Plaintiffs filed their motion for class certification on May 18, 2015. (Dkt. 315.) Plaintiffs
17 submitted fifteen declarations from current and former employees in support of their motion
18 (Plaintiffs’ Declarants”). HP sought to depose each of Plaintiffs’ Declarants, and ultimately
19 deposed eleven of them. Declaration of Anne B. Shaver (“Shaver Decl.”), ¶ 4. The remaining
20 four withdrew their declarations because they were not available to appear for a deposition. *Id.*

21 In preparation for the depositions, Plaintiffs requested that HP produce the witnesses’
22 personnel files, including performance reviews, and any documents it intended to use as exhibits
23 at deposition. HP then produced not only the material which Plaintiffs requested, but in order to
24 facilitate its own cross-examination HP also produced tens of thousands of pages of email
25 documents from the witnesses’ electronic files. Shaver Decl., ¶ 5. For one witness alone, HP
26 produced approximately 9,300 documents. *Id.* HP used certain of the email documents as
27 exhibits in the vast majority of depositions of Plaintiffs’ Declarants.
28

1 HP originally received an elongated briefing schedule of 35 days for its opposition (Dkt.
2 299), and at the end received a stipulated 1-day extension of the deadline, filing its opposition to
3 the motion for class certification on June 23, 2015.¹ (Dkt. 328.)

4 HP submitted nineteen declarations from current employees, and seven managers, in
5 support of its opposition (“HP’s Declarants”). On June 25, Plaintiffs notified HP that they would
6 seek to depose certain of HP’s Declarants, to be identified the following day, and that a short
7 extension of time to Plaintiffs’ deadline to file their reply in support of class certification may be
8 warranted in light of the July 4 holiday and witnesses’ schedules. Shaver Decl., Ex. A.
9 Immediately and without any verification of witnesses’ schedules (indeed, without even the list of
10 Declarants designated for deposition), HP responded that it would not agree to an extension. *Id.*

11 That same day, Plaintiffs selected a narrowly-tailored sample of six HP Declarants whom
12 Plaintiffs wish to depose. Shaver Decl., Ex. A. Plaintiffs stated that no modification to the
13 schedule would be necessary if HP would produce the witnesses for deposition by July 8, 2015,
14 and produce each witnesses’ documents 48 hours in advance of their deposition (with document
15 productions exceeding 500 pages being produced 72 hours in advance). *Id.* Specifically,
16 Plaintiffs requested the Declarants’ personnel files, including performance reviews, as well as
17 email production according to the same search and production parameters HP had applied to
18 Plaintiffs’ Declarants when HP was preparing its cross-examination. *Id.* Plaintiffs requested that
19 HP confirm whether or not it would agree to this arrangement by Sunday, June 28.

20 As of the date of this filing, HP has offered dates of availability for four of the six
21 witnesses, in four cities: Boston, San Diego, Fort Collins, and Roseville. Shaver Decl., Ex. A &
22 ¶ 7. (Notably, Plaintiffs’ counsel is not available on July 6, so only three of the dates can be
23 confirmed.) HP has not agreed to produce any documents for the witnesses (except performance
24 reviews and workday information [e.g., basic facts of employment] *if* the witness first consents),
25 and refuses to apply the same production parameters it used for its own search, claiming
26 “privacy” issues. *Id.*

27 ¹ Due to the unavailability of one of Plaintiffs’ Declarants to appear for deposition until June 18,
28 2015, two days before HP’s deadline to submit its opposition papers, the parties stipulated to, and
the Court ordered, a one-day extension to their deadline. Dkt. 322, 323.

Based on these facts, Plaintiffs now move to compel production of HP's Declarants' email files, subject to the same search criteria applied to Plaintiffs' Declarants' emails, and for a short extension of their deadline to reply to HP's opposition to class certification to allow completion of the declarant discovery. Regardless, as of today, Plaintiffs have received no documents of any kind for any witness.²

III. Plaintiffs Seek An Expedited Telephonic Conference To Address This Dispute.

Due to the time sensitive nature of this motion, Plaintiffs request that the Court schedule a telephonic conference at its earliest convenience, so that the parties can move forward with declarant discovery, with the benefit of the Court's guidance, as expeditiously as possible.

IV. Argument

A. Defendants Should Produce Their Declarants' Documents.

As noted above, HP considered the emails of Plaintiffs' Declarants to be relevant, discoverable material. It used such emails as exhibits in the depositions of the vast majority of Plaintiffs' Declarants, on a variety of subject matters. For example, HP quizzed declarant Jennifer Chang on the hours that she worked, based on emails where she requested scheduling accommodation to attend classes. Shaver Decl., Ex. B (Chang Dep. at 118:24-120:9). HP asked declarant Rebecca Levin about an email she wrote to her managers conveying some of the frustrations her teammates were experiencing, in an effort to show that she was making recommendations to managers about how to run the business. *Id.*, Ex. C (Levin Dep. at 46:8-62:8). Similarly, HP used an email chain in the deposition of Brian Jessen to question him about how long it took to resolve a particular customer's complaint, and the nature of the problem. *Id.*, Ex. D (Jessen Dep. at 169:24-175:12). Just as with these examples, in the vast majority of depositions, HP relied on these documents to pursue its theory of the case.

Yet HP now refuses to produce the same set of documents for its own witnesses. HP's only argument is that Plaintiffs' Declarants are opt-ins to the lawsuit, whereas HP's declarants are not. This is a false dichotomy. Both sets of declarants are class member witnesses who have

² In fairness to both sides, HP should actually produce complete files for all its witnesses, and not just ones being deposed.

1 voluntarily filed sworn testimony as evidence in the litigation. On both sides of the case, their
 2 documents are equally relevant. HP should not be allowed to use email discovery to cross-
 3 examine Plaintiffs' Declarants, and then refuse to provide the same basic discovery of its own
 4 declarants. Moreover, HP's alleged privacy concerns are easily dealt with by the protective order
 5 in this case. Therefore, Plaintiffs respectfully request that the Court order HP to produce these
 6 documents no less than 48 hours before the deposition of each witness, and no less than 72 hours
 7 before in the event that the production for a single witness exceeds 500 pages.

8 **B. Plaintiffs' Deadline To File Their Reply In Support Of Class Certification**
 9 **Should be Extended.**

10 Plaintiffs' received Defendants' opposition on June 23, and promptly notified HP on June
 11 25 of the identities of the declarants they wished to depose – just six of the twenty-six declarants.
 12 As of today's date, HP has offered deposition availability for just four of the six witnesses – two
 13 this week (July 1 or 2), and two next week (July 6-8), although Plaintiffs' counsel are not
 14 available on July 6. In an effort to move forward as expeditiously as possible, Plaintiffs
 15 responded that they would take depositions this week, subject to re-opening if the Court grants
 16 Plaintiffs' motion to compel documents. Shaver Decl., Ex. A.

17 Plaintiffs maintain that a short extension to their deadline to file their reply brief is
 18 warranted under these facts. Plaintiffs have 10 days to receive and review documents, travel to 6
 19 cities and complete the six depositions, all while preparing their reply brief. To date, only one
 20 witness has been confirmed, and document production has not started and the scope remains in
 21 dispute. Once this discovery is completed, Plaintiffs need a reasonable amount of time (three
 22 days) to integrate the discovery into their reply brief. Therefore, Plaintiffs respectfully request
 23 that their deadline to reply to HP's opposition to class certification be extended from July 10,
 24 2015, to July 17, 2015, or to the business day three days after the last deposition is completed,
 25 whichever is later.

26 The hearing on Plaintiffs' motion is scheduled for July 30, 2015. Plaintiffs do not oppose
 27 an extension of the hearing date if the Court so desires.
 28

V. Conclusion

For the foregoing reasons, Plaintiffs respectfully request that the Court compel HP to produce its declarants' documents, and grant a one week extension of time to the deadline for Plaintiffs' reply brief.

Dated: June 30, 2015

Respectfully submitted,

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: /s/Anne B. Shaver

Anne B. Shaver

Kelly M. Dermody (Cal. Bar No. 171716)
Daniel M. Hutchinson (Cal. Bar No. 239458)
Anne B. Shaver (Cal. Bar No. 255928)
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E-Mail: kdermody@lchb.com
E-Mail: dhutchinson@lchb.com
E-Mail: ashaver@lchb.com
E-Mail: mpilotin@lchb.com

Jahan C. Sagafi (Cal. Bar No. 224887)
OUTTEN & GOLDEN LLP
One Embarcadero Center, 38th Floor
San Francisco, CA 94111
Telephone: (415) 638-8800
Facsimile: (415) 638-8810
E-Mail: jsagafi@ outtengolden.com

Adam T. Klein (admitted pro hac vice)
Juno Turner (admitted pro hac vice)
OUTTEN & GOLDEN LLP
3 Park Avenue, 29th Floor
New York, New York 10016
Telephone: (212) 245-1000
Facsimile: (212) 977-4005
E-Mail: atk@outtengolden.com
E-Mail: jturner@outtengolden.com

Attorneys for Plaintiffs and proposed Class Members